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PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: R.D. Everett, et al.	)	Examiner: N.L. Torres-Velazquez
Application No.: 09/518,756	)	Art Unit: 1771
Filed: March 3, 2000	)	Atty's Docket No.: 13,507.2
	)	Confirmation No.: 6094

Part 12 3

For: LAYERED ABSORBENT STRUCTURE WITH A HETEROGENEOUS LAYER REGION

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Assistant Commissioner for Patents
Washington, D.C. 20231

on November 4, 2002.

By: Barbara D. Miller
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BRIEF ON APPEAL

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. § 1.192, Appellants submit this Brief in support of their Appeal of Examiner N.L. Torres-Velazquez's **Final Rejection** (Paper No. 12, having a mailing date of June 5, 2002) of claims 1, 4, 6, 7, 9-37, and 39-42. On September 4, 2002, Appellants, pursuant to 37 C.F.R. § 1.191, mailed a timely Notice of Appeal. In accordance with 37 C.F.R. § 1.192(a), this Brief is filed in triplicate.

Real Party in Interest

The present Application has been assigned to Kimberly-Clark Worldwide, Inc., the real party in interest.

Related Appeals and Interferences

There are no Appeals or Interferences related to this Appeal.

Status of Claims

Claims 1, 4, 6, 7, 9-37 and 39-42 are the subject of this Appeal. No other claims are pending. Claims 2, 3, 5, 8 and 38 have been cancelled.

Status of Amendments

There were no Amendments filed subsequent to the **Final Rejection**.

Summary of Invention

The present invention relates to an absorbent system having multiple absorbent layer regions. More particularly, the invention relates to a layered, composite absorbent structure with individual layers which are constructed and arranged to selectively cooperate to provide desired performance parameters in the composite, layered structure.

Generally stated, the absorbent core (30) of the absorbent composite system (26) has multiple absorbent layer regions. The properties of the individual layer regions are selected and arranged to provide improved leakage performance by balancing the intake and wicking properties of the absorbent components. The appropriate balance of intake and wicking properties can be represented by various determining factors, such as the Flow Conductance Value, Liquid Wicking Potential Value, basis weight, density, particle size, fiber size, relative amount of fiber, and the like, as well as many combinations thereof. The Flow Conductance Value of the absorbent relates to the available void volume and permeability of the structure throughout the various saturation levels typically encountered during ordinary use. To provide improved performance for the absorbent system, the liquid should be allowed to enter the absorbent structure at a rate which is as near as possible to the rate at which the liquid is

delivered onto the absorbent composite structure. The Flow Conductance Value can help characterize the intake potential of the overall, absorbent system (26), and can particularly help characterize the intake potential of the absorbent core (30). In addition, it is important to move the liquid away from the entry area for storage in more remote areas of the absorbent system to thereby recondition and prepare the entry area to more efficiently receive the next insult of liquid. The Liquid Wicking Potential Value can help characterize the ability of the absorbent structure to remove fluid from the entry, target area between insults.

Specifically, the present invention can provide an absorbent system which includes multiple absorbent layer regions. The two or more absorbent layer regions can advantageously interact in a manner which preferentially locates an appointed liquid in a selected layer region. This localization of the liquid within this layer region can increase the potential of this layer region to move liquid through capillary action due to the higher saturation level and increased amount of liquid available. The intake capability of the absorbent system can be maintained or improved over current systems by keeping a layer region of the absorbent system at low saturation levels through many insults of the product, while providing optimum intake performance through appropriate control of the composite properties. The low saturation in this layer region can provide void volume for the incoming insult as well as a high permeability, thus increasing the intake rate of the absorbent system as a whole. The properties of this layer region can advantageously be balanced with an appropriately high level of capillary tension to provide enough control of the liquid to substantially stop undesired leakage.

In particular aspects of the invention, at least one primary layer region can have a heterogeneous structure. In particular configurations, the at least one primary layer region can include a plurality of two or more sublayers. In other aspects, the layer regions of the absorbent system can cooperate to provide a desired Liquid Wicking Potential Value, and can also provide a desired Flow Conductance Value. Further aspects of the invention can include superabsorbent polymer (SAP), material which exhibits a particular MAUL value and/or a particular controlled absorbency rate. For example, a desired controlled-rate superabsorbent can exhibit a particular Tau value. In additional aspects, the invention can include a combination of superabsorbent materials which have a particular ratio of Tau values.

In its various aspects, the invention can provide an article having a more efficient absorbent structure which is thin with low bulk, has high absorbent capacity, and is resistant to leakage. The configurations of the invention can more fully utilize the total potential absorbent capacity of the absorbent structure, and can more efficiently move and distribute acquired liquid away from the original intake area to more remote areas which are located closer to the distal end regions of the absorbent structure. In addition, the structures of the invention can provide an ability to acquire and intake liquid at a rapid rate, and can maintain the desired intake rate after the absorbent structure has been wetted and has reached a significant portion of its potential, total absorbent capacity.

Issues

Claims 9-37 and 39 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by *Seymour et al.* (US 4,923,454).

Claims 1-4, 6-8 and 40-42 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Seymour et al.* (US 4,923,454) as applied to claims 9-37 and 39, and further in view of *Dodge, II et al.* (US 5,820,973). According to the Examiner, *Seymour et al.* discloses a number of elements that may also be found in Appellants' claimed invention. The Examiner admits, however, that *Seymour et al.* fails to expressly disclose that the absorbent core has a crotch width of not more than about 10 cm. To remedy this and other defects in *Seymour et al.*, the Examiner cites *Dodge, II et al.* for disclosing a design of an absorbent article with a narrow crotch. The Examiner alleges that it

> would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the absorbent article and provide it with a narrow crotch to reduce the bulkiness in the crotch region of the article, improve the fit, comfort and aesthetics.[1]

Claims 1, 4, 6-8 and 41-42 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Bewick-Sonntag et al.* (US 5,762,641) in view of *Zenker et al.* (US 6,245,051 B1) and *Dodge, II et al.* (US 5,820,973). According to the Examiner, *Bewick-Sonntag et al.* discloses an absorbent article having a number of elements that may also be found in Appellants'

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[1] Office Action Summary (Paper No. 12) mailed June 5, 2002, at 5.

claimed invention. The Examiner admits, however, that *Bewick-Sonntag et al.* does not disclose an absorbent core having a dry thickness of less than about 6 mm and a minimum crotch width of less than about 10 cm. To remedy this and other defects in *Bewick-Sonntag et al.*, the Examiner cites *Zenker et al.* as disclosing an absorbent article having a retention portion that can have a dry thickness of between about 0.1 and 0.8 cm and *Dodge, II et al.* for disclosing a design of an absorbent article with a narrow crotch. The Examiner alleges that it

> would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the absorbent article and provide it with a dry thickness between about 0.1 cm to about 0.8 cm, and with a narrow crotch for the purpose of reducing a wet-thickness of the absorbent structure and also to reduce the bulkiness in the crotch region of the article, improve the fit, comfort and aesthetics ...[2]

While rejecting claims Claims 1, 4, 6-8 and 41-42 under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Bewick-Sonntag et al.* in view of *Zenker et al.* and *Dodge, II et al.*, the Examiner also alleges that "[a]s for claim 4, the Combined Conductance-Wicking Value is inherent from the structure in the independent claim."[3]

In view of the foregoing, the following distinct issues and their related sub-issues have been raised:

I. Has the Examiner established a *prima facie* case of anticipation?

   A. Does anticipation require the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim?

II. Has the Examiner established a *prima facie* case of obviousness?

   A. With regard to *Seymour et al.* in view of *Dodge, II et al.*:

      i. Is a teaching, suggestion or motivation to combine an essential evidentiary component of an obviousness holding?

      ii. Must the references as a whole suggest the desirability of making the combination?

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[2] *Id.*, at 7.
[3] *Id.*

iii. Can the motivation to combine derive from Appellants' specification?

B. With regard to *Bewick-Sonntag et al.* in view of *Zenker et al.* and *Dodge, II et al.*:

i. Is a teaching, suggestion or motivation to combine an essential evidentiary component of an obviousness holding?

ii. Must the references as a whole suggest the desirability of making the combination?

iii. Can the motivation to combine derive from Appellants' specification?

III. Can the doctrine of inherency support an obviousness rejection?

Grouping of Claims

With regard to Issue I.A., claims 9-37 and 39 stand or fall as a group.

With regard to Issue II.A., claims 1, 4, 6-8 and 40-42 stand or fall as a group.

With regard to Issue II.B., claims 1, 4, 6-8 and 41-42 stand or fall as a group.

With regard to Issue III., claim 4 stands on its own.

Argument

I. HAS THE EXAMINER ESTABLISHED A *PRIMA FACIE* CASE OF ANTICIPATION?

The Commissioner (through the Examiner) bears the initial duty of supplying the factual basis supporting a rejection of a patent application, including a rejection based on anticipation. As stated by the United States Court of Customs and Patent Appeals:

> We think the precise language of 35 U.S.C. § 102 that "a person shall be entitled to a patent unless," concerning novelty and obviousness, clearly places a burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103, see *Graham* [*Graham v. John Deer Co.*, 383 U.S. 1, 86 S.Ct. 684 (1966)] and *Adams* [*U.S. v. Adams*, 383 U.S. 39, 86 S.Ct. 708 (1966)].[4]

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[4] *In re Warner*, 379 F.2d 1001, 1016, 54 C.C.P.A. 1628, 1634 (CCPA 1967).

This initial duty places on the Commissioner and the Examiner the burden of presenting a *prima facie* case of anticipation.[5] As stated by the Board of Patent Appeals and Interferences, "it is by now well settled that the burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office."[6] Consequently, only when the Patent Office has made out a *prima facie* case of anticipation does the burden then shift to the applicant to rebut it.[7]

To establish a *prima facie* case of anticipation, the claim must first be correctly construed to define the scope and meaning of each contested element.[8] In particular, the Examiner's anticipation analysis must be conducted on an element by element basis, with specific fact findings for each contested element and satisfactory explanations for such findings.[9]

For any or all of the reasons advanced below, the Examiner has in this instance failed to establish a *prima facie* case of anticipation, and thus has not shifted to Appellants the burden of going forward.

A. Does anticipation require the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim?

As stated by the United States Court of Appeals for the Federal Circuit, "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim*."[10] In deciding the issue of anticipation, the Examiner must identify the elements of the claims, determine their meaning in light of the specification and prosecution history, and identify corresponding elements disclosed in the allegedly anticipating reference.[11] Consequently, the Examiner is required to produce a factual

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[5] *See, In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138-39 (Fed. Cir. 1986), and *In re Wilder*, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970).

[6] *In re Skinner*, 2 USPQ2d 1788, 1788-89, 1986 WL 83361 (Bd. Pat. App. & Interf. 1986).

[7] *In re Bass*, 47 F.2d 1276, 59 C.C.P.A. 1342 (CCPA 1973).

[8] *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

[9] *Gechter v. Davidson*, 116 F.3d 1454, 43 USPQ2d 1030 (Fed. Cir. 1997).

[10] *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connelly v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

[11] *Id.*

basis for rejection of Appellants' application.[12] Where such a factual basis is lacking, there is no necessity for resolving doubt in favor of the Examiner's position.[13]

When viewed under the standard recited above, the Examiner's analysis lacks the level of specificity necessary to support a *prima facie* case of anticipation. In alleging that claims 9-37 and 39 were unpatentable over *Seymour et al.* under 35 U.S.C. § 102(b), the Examiner provided only a limited analysis which included the following conclusory findings:

> Regarding the limitation of having a Liquid Wicking Value of at least about 38% in one of the first and second primary layer regions fails to provide patentable distinction over the prior art. The prior art is found to disclose each chemical and structural feature instantly claimed, therefore it must meet the property requirement specified, otherwise, applicant's claim is incomplete. Note ex parte Slob (157 USPQ 172), which supports this position. The same applies to the claimed MAUL and Tau values.[14]

Notably absent from the Examiner's limited analysis is any fact-based explanation for whether, how and why *Seymour et al.* contains each and every element of Appellants' claimed invention, arranged as in the claims. Moreover, the Examiner is unable to say that their presence in *Seymour et al.* was conceded. Nevertheless, to hold that a prior art reference anticipates a claim, the Examiner must expressly find that each and every element of the claimed invention, arranged as in the claim, is disclosed in the single reference.

In this instance, the Examiner has failed to provide the requisite factual basis to support a *prima facie* case of anticipation. Specifically, the Examiner has failed to (i) identify each and every element of the claimed invention, (ii) determine their meaning in light of the specification and prosecution history and (iii) identify corresponding elements disclosed in *Seymour et al.*, the allegedly anticipating reference. In *In re Bond*,[15] the United States Court of Appeals for the Federal Circuit vacated the Board's anticipation decision because it failed to make one particular subsidiary finding. In that case, the Board concluded that a prior art reference anticipated applicant's claimed telephone answering machine, finding that the reference disclosed the claimed "delay means."[16] The delay means disclosed in the reference, however, was not

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[12] *In re Warner*, 379 F.2d 1011, 1016, 54 C.C.P.A. 1628, 1634 (CCPA 1967).
[13] *Id.*
[14] Office Action Summary (Paper No. 12) mailed June 5, 2002, at 5.
[15] 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).
[16] *Id.*, 910 F.2d at 833, 15 USPQ2d at 1568.

identical to the delay means in the specification. The Federal Circuit vacated the Board's anticipation decision because the Board offered no specific factual basis to support the conclusion that the delay means in the specification and that embodied in the prior art reference were structurally equivalent. Here, the Examiner's limited analysis omits not one, but several crucial findings. In particular, the Examiner failed to conduct an anticipation analysis on an element by element basis, and thereafter provide specific fact findings for each contested element with satisfactory explanations for such findings. Having failed to expressly find that each and every element of Appellants' claimed invention, arranged as in the claims, is disclosed in *Seymour et al.*, the Examiner has not established a *prima facie* case of anticipation, and thus has not shifted to Appellants the burden of going forward.

II. HAS THE EXAMINER ESTABLISHED A *PRIMA FACIE* CASE OF OBVIOUSNESS?

To reach a proper determination of *prima facie* obviousness under 35 U.S.C. § 103, the Examiner must step backward in time and into the shoes worn by the hypothetical person of ordinary skill in the art when the invention was unknown and just before it was made.[17] In view of all factual information, the Examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person.[18] Knowledge of applicants' specification must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicants' specification is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

To establish a *prima facie* case of obviousness, three basic criteria must be met.[19] First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

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[17] *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1566, 1 USPQ2d 1593, 1595-96 (Fed. Cir. 1987).

[18] *Id.*

[19] MPEP § 2143.

combine reference teachings.[20] Second, there must be a reasonable expectation of success.[21] Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.[22] The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' specification.[23]

For any or all of the reasons advanced below, the Examiner has in this instance failed to establish a *prima facie* case of obviousness, and thus has not shifted to Appellants the burden of going forward.

A. With regard to Seymour et al. in view of Dodge, II et al.:

i. Is a teaching, suggestion or motivation to combine an essential evidentiary component of an obviousness holding?

A teaching, suggestion or motivation to combine is an essential evidentiary component of an obviousness holding.[24] Evidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved,[25] although "the suggestion more often comes from the teachings of the pertinent references ..."[26] The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular.[27] Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."[28] In addition to demonstrating the propriety of an obviousness analysis, particular factual findings regarding the suggestion, teaching or motivation

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[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998).
[25] *See, Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996).
[26] *In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998).
[27] *See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998).
[28] *See, e.g., McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) ("Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.").

to combine serve a number of important purposes, including: (1) clear explication of the position adopted by the Examiner; (2) identification of the factual disputes, if any, between the applicants and the Examiner; and (3) facilitation of review of appeal.[29] Here, however, the Examiner has not made particular findings regarding the locus of the suggestion, teaching or motivation to combine the cited references.

The obviousness rejection of the Examiner results from a combination of *Seymour et al.* in view of *Dodge, II et al.* To justify this combination, the Examiner simply states that it would have been obvious to combine the cited references. Nowhere does the Examiner particularly identify any suggestion, teaching or motivation to combine the secondary reference with the primary reference, nor does the Examiner make specific – or even inferential – findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis.[30]

To the contrary, the obviousness analysis conducted by the Examiner is limited to a discussion that it would have been obvious to combine the cited references to read on the claimed invention. For example, the Examiner admits that *Seymour et al.* fails to expressly disclose that the absorbent core has a crotch width of not more than about 10 cm, finds that *Dodge, II et al.* teaches the use of a design of an absorbent article with a narrow crotch, and then baldly concludes that it would have been obvious to modify the absorbent article and provide it with a narrow crotch. Yet this analysis fails to demonstrate how the secondary reference teaches or suggests its combination with the primary reference.[31] In this instance, the Examiner fails to show, with any degree of clarity or particularity, that the cited references teach, suggest or motivate the combination advocated. As a teaching, suggestion or motivation to combine is an essential evidentiary component of an obviousness holding, the Examiner has not established a

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[29] *In re Dembiczak*, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

[30] *See, e.g., Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996).

[31] *See, In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("[A] rejection cannot be predicated on the mere identification ... of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.").

prima facie case of obviousness, and thus has not shifted to Appellants the burden of going forward.

In view of the Examiner's failure to present any line of reasoning as to why one of skill in the art would have been motivated to make the distinctive changes and modifications required to derive the invention called for by Appellants', the Examiner's assertion that "it would have been obvious ... to a person having ordinary skill in the art to modify the absorbent article and provide it with a narrow crotch region of the article, improve the fit, comfort and aesthetics"[32] presents a conclusion, rather than a reason. Presentation by the Examiner of a conclusion, rather than a reason, is not a proper ground for rejection and should be reversed.

In *Ex parte William Garrett*, it was held that the Examiner's assertion that a proposed modification would have been "an obvious matter of engineering design choice well within the level of skill of one of ordinary skill in the art" was a conclusion, rather than a reason.[33] Here, the Examiner's assertion that "it would have been obvious ... to a person having ordinary skill in the art" also presents a conclusion, rather than a reason for the rejection. Consequently, the Examiner has not established a *prima facie* case of obviousness, and thus has not shifted to Appellants the burden of going forward.

ii. Must the references as a whole suggest the desirability of making the combination?

While non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references,[34] the critical inquiry is whether there is something in the references as a whole to suggest the desirability, and thus the obviousness, of making the combination.[35]

In this instance, there is no such suggestion. As admitted by the Examiner, *Seymour et al.* fails to disclose an absorbent core having a crotch width of less than about 10 cm. To remedy this and other defects in *Seymour et al.*, the Examiner cites *Dodge, II et al.* as disclosing an

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[32] Office Action Summary (Paper No. 12) mailed June 5, 2002, at 5.

[33] 1986 Pat. App. LEXIS 8.

[34] *See, In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981), and *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

[35] *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984).

absorbent article having a narrow crotch. The Examiner alleges that it would have been obvious to substitute the narrow crotch of *Dodge, II et al.* into the absorbent article of *Seymour et al.* to reduce the bulkiness in the crotch region of the absorbent article. Contrary to the Examiner's allegations, however, *Dodge, II et al.* does not, simply by virtue of merely mentioning the use of a design of an absorbent article with a narrow crotch, suggest that which the Examiner states is obvious.[36] As discussed herein, the cited references as a whole provide no suggestion to the desirability, and thus the obviousness, of making the combination advocated by the Examiner. Consequently, the Examiner has not established a *prima facie* case of obviousness, and thus has not shifted to Appellants the burden of going forward.

iii. Can the motivation to combine derive from Appellants' specification?

The motivation to combine cannot derive from Appellants' specification.[37] Measuring a claimed invention against the standard established by 35 U.S.C. § 103 requires the oft-difficult but critical step of casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.[38] The Examiner cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.[39]

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[36] *See*, MPEP § 2143.01 ("The mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).").

[37] *See, In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531-32 (Fed. Cir. 1988) ("[t]here must be a reason or suggestion in the art for selecting the procedure used, other than the knowledge learned from the applicant's disclosure").

[38] *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

[39] *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988).

It is quite clear that the best defense against a hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references.[40] "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight."[41] In this instance, the Examiner has improperly used Appellants' disclosure as a blueprint with the absorbent article of *Seymour et al.* serving as the starting block and then looking to *Dodge, II et al.* for elements present in the disclosure, but missing from the absorbent article of *Seymour et al.* The Examiner does not discuss any specific evidence of motivation to combine, but only makes broad conclusory statements. "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'."[42] In this instance, the Examiner fails to identify with sufficient specificity any such reason or suggestion regarding the motivation to combine the cited references in the manner advocated. Consequently, the use of Appellants' disclosure to reconstruct the claimed invention from isolated pieces of the cited references contravenes the statutory mandate of 35 U.S.C. § 103.

B. With regard to Bewick-Sonntag et al. in view of Zenker et al. and Dodge, II et al.:

i. Is a teaching, suggestion or motivation to combine an essential evidentiary component of an obviousness holding?

A teaching, suggestion or motivation to combine is an essential evidentiary component of an obviousness holding.[43] Evidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved,[44] although "the suggestion more often comes from the teachings of the pertinent references ..."[45] The range of sources available,

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[40] *See, In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).
[41] *Id.*
[42] *Id.*
[43] *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998).
[44] *See, Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996).
[45] *In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998).

however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular.[46] Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."[47] In addition to demonstrating the propriety of an obviousness analysis, particular factual findings regarding the suggestion, teaching or motivation to combine serve a number of important purposes, including: (1) clear explication of the position adopted by the Examiner; (2) identification of the factual disputes, if any, between the applicants and the Examiner; and (3) facilitation of review of appeal.[48] Here, however, the Examiner has not made particular findings regarding the locus of the suggestion, teaching or motivation to combine the cited references.

The obviousness rejection of the Examiner results from a combination of *Bewick-Sonntag et al.* in view of *Zenker et al.* and *Dodge, II et al.* To justify this combination, the Examiner simply states that it would have been obvious to combine the cited references. Nowhere does the Examiner particularly identify any suggestion, teaching or motivation to combine the secondary references with the primary reference, nor does the Examiner make specific – or even inferential – findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis.[49]

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[46] *See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998).

[47] *See, e.g., McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) ("Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.").

[48] *In re Dembiczak*, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

[49] *See, e.g., Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996).

To the contrary, the obviousness analysis conducted by the Examiner is limited to a discussion that it would have been obvious to combine the cited references to read on the claimed invention. For example, the Examiner admits that *Bewick-Sonntag et al.* does not disclose an absorbent core with a dry thickness of less than about 6 mm and a minimum crotch width of less than about 10 cm, finds that *Zenker et al.* teaches a retention portion that can have a dry thickness of between about 0.1 and 0.8 cm, finds that *Dodge, II et al.* teaches the use of a design of an absorbent article with a narrow crotch, and then baldly concludes that it would have been obvious to modify the absorbent article and provide it with a dry thickness of between about 0.1 and 0.8 cm and a narrow crotch. Yet this analysis fails to demonstrate how the secondary references teach or suggest their combination with the primary reference.[50] In this instance, the Examiner fails to show, with any degree of clarity or particularity, that the cited references teach, suggest or motivate the combination advocated. As a teaching, suggestion or motivation to combine is an essential evidentiary component of an obviousness holding, the Examiner has not established a *prima facie* case of obviousness, and thus has not shifted to Appellants the burden of going forward.

In view of the Examiner's failure to present any line of reasoning as to why one of skill in the art would have been motivated to make the distinctive changes and modifications required to derive the invention called for by Appellants', the Examiner's assertion that "it would have been obvious ... to a person having ordinary skill in the art to modify the absorbent article and provide it with a dry thickness ... and with a narrow crotch for the purpose of reducing a wet-thickness of the absorbent structure and also to reduce the bulkiness in the crotch region of the article, improve the fit, comfort and aesthetics"[51] presents a conclusion, rather than a reason. Presentation by the Examiner of a conclusion, rather than a reason, is not a proper ground for rejection and should be reversed.

In *Ex parte William Garrett*, it was held that the Examiner's assertion that a proposed modification would have been "an obvious matter of engineering design choice well within the

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[50] *See, In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed Cir. 2000) ("[A] rejection cannot be predicated on the mere identification ... of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.").

[51] Office Action Summary (Paper No. 12) mailed June 5, 2002, at 7.

level of skill of one of ordinary skill in the art" was a conclusion, rather than a reason.[52] Here, the Examiner's assertion that "it would have been obvious ... to a person having ordinary skill in the art" also presents a conclusion, rather than a reason for the rejection. Consequently, the Examiner has not established a *prima facie* case of obviousness, and thus has not shifted to Appellants the burden of going forward.

ii. Must the references as a whole suggest the desirability of making the combination?

While non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references,[53] the critical inquiry is whether there is something in the references as a whole to suggest the desirability, and thus the obviousness, of making the combination.[54]

In this instance, there is no such suggestion. As admitted by the Examiner, *Bewick-Sonntag et al.* does not disclose an absorbent core with a dry thickness of less than about 6 mm and a minimum crotch width of less than about 10 cm. To remedy this and other defects in *Bewick-Sonntag et al.*, the Examiner cites *Zenker et al.* as teaching a retention portion having a dry thickness of between about 0.1 and 0.8 cm and *Dodge, II et al.* as teaching the design of an absorbent article having a narrow crotch width. The Examiner alleges that it would have been obvious to incorporate the dry thickness of *Zenker et al.* and the narrow crotch of *Dodge, II et al.* into the absorbent article of *Bewick-Sonntag et al.* to reduce the bulkiness in the crotch region of the absorbent article. Contrary to the Examiner's allegations, however, *Zenker et al.* does not, simply by virtue of merely mentioning that a retention portion can have a dry thickness of between about 0.1 and 0.8 cm, suggest that which the Examiner states is obvious.[55] Moreover, *Dodge, II et al.* does not, simply by virtue of merely mentioning the use of a design of an

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[52] 1986 Pat. App. LEXIS 8.

[53] *See, In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981), and *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

[54] *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984).

[55] *See*, MPEP § 2143.01 ("The mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).").

absorbent article with a narrow crotch, suggest that which the Examiner states is obvious.[56] As discussed herein, the cited references as a whole provide no suggestion to the desirability, and thus the obviousness, of making the combination advocated by the Examiner. Consequently, the Examiner has not established a *prima facie* case of obviousness, and thus has not shifted to Appellants the burden of going forward.

iii. Can the motivation to combine derive from Appellants' specification?

The motivation to combine cannot derive from applicants' specification.[57] Measuring a claimed invention against the standard established by 35 U.S.C. § 103 requires the oft-difficult but critical step of casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.[58] The Examiner cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.[59]

It is quite clear that the best defense against a hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references.[60] "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight."[61] In this instance, the Examiner has improperly used Appellants' disclosure as a blueprint with the absorbent article of *Bewick-Sonntag et al.* serving as the starting block and then first looking to *Zenker et al.* and then to *Dodge, II et al.* for elements present in the disclosure, but missing from the absorbent article of *Bewick-Sonntag et al.* The Examiner does not discuss any specific evidence of motivation to combine, but only makes broad conclusory statements. "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'."[62] In this instance, the

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[56] *Id.*

[57] *See, In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531-32 (Fed. Cir. 1988) ("[t]here must be a reason or suggestion in the art for selecting the procedure used, other than the knowledge learned from the applicant's disclosure").

[58] *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

[59] *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988).

[60] *See, In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

[61] *Id.*

[62] *Id.*

Examiner fails to identify with sufficient specificity any such reason or suggestion regarding the motivation to combine the cited references in the manner advocated. Consequently, the use of Appellants' disclosure to reconstruct the claimed invention from isolated pieces of the cited references contravenes the statutory mandate of 35 U.S.C. § 103.

III. CAN THE DOCTRINE OF INHERENCY SUPPORT AN OBVIOUSNESS REJECTION?

The Examiner's reliance on the doctrine of inherency to support an obviousness rejection is improper.[63] The doctrine of inherency generally is only available where a rejection is based on anticipation. In this instance, the Examiner is attempting to make an obviousness rejection under 35 U.S.C. § 103. Consequently, the Examiner's attempt to extend the doctrine of inherency to an obviousness rejection is improper and should be reversed.

Miscellaneous Arguments

It may also be argued that motivation for combining the teachings of a prior art reference may be based upon an Examiner's explanation founded on logic and sound scientific principle. However, when an Examiner relies on a scientific theory, evidentiary support for the existence and meaning of that theory must be provided.[64] In this instance, the Examiner has failed to introduce into the record evidentiary support for any such logic or sound scientific principle. In fact, it is unclear how one of ordinary skill in the art would be led to combine the teachings of the cited references.

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[63] *See In re Spormann*, 363 F.2d 444, 448 (CCPA 1966) ("the inherency of an advantage and its obviousness are entirely different questions."); *In re Shetty*, 566 F.2d 81, 86 (CCPA 1977); and *Trintec Industries, Inc., v. Top-U.S.A. Corp.*, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002) (citing *Jones v. Hardy*, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984) ("though anticipation is the epitome of obviousness, [they] are separate and distinct concepts.")).

[64] *See*, MPEP § 2144.02

Appellants urge that the only possible incentive to combine the teachings of the cited references improperly stems from the teachings of Appellants' specification. In view of there being no incentive to support combining the references relied upon, it appears that the Examiner has grounded her rejection on unestablished prior art. However, no fact or other information has been placed in the record that suggests or provides incentive for making Appellants' invention. Appellants have respectfully and timely traversed any assertion that the claimed invention is "common knowledge" or "well known" or that any fact not of record is "common knowledge" or "well known" since any such fact has neither been raised nor addressed by the Examiner. Should the Examiner persist, however, in basing her rejection(s) on facts within her personal knowledge, Appellants hereby call for the Examiner to support any such facts by way of an affidavit in accordance with MPEP § 2144.03.[65]

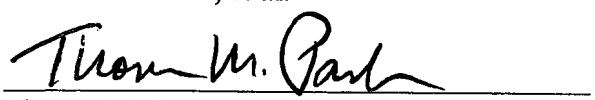
Conclusion

For the extensive reasons advanced above, Appellants contend that each claim is patentable. Consequently, reversal of the Examiner's **Final Rejection** is requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any fee required for this Brief, or credit any overpayment, to Kimberly-Clark Worldwide, Inc., Deposit Account No. 11-0875.

Respectfully submitted,

R.D. EVERETT, et al.



Date: November 4, 2001

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[65] "When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner."

Appendix

1. An absorbent article, comprising:

a backsheet layer;

a substantially liquid permeable topsheet layer;

an absorbent composite structure sandwiched between said backsheet and topsheet layers, said absorbent composite including an absorbent core having a first, superabsorbent containing, fibrous primary layer region and at least a second, superabsorbent containing, fibrous primary layer region;

at least one of said first and second primary layer regions having a Liquid Wicking Value of at least about 38%; and

at least one of said first and second primary layer regions includes a plurality of sublayers; wherein at least one of said primary layer regions includes a superabsorbent material which exhibits a Tau value of not less than about 0.8 min.

2. (Cancelled)

3. (Cancelled)

4. An article as recited in claim 1, wherein said absorbent core has a Combined Conductance-Wicking Value of at least about $14 * 10^{-6}$ cm^3.

5. (Cancelled)

6. An article as recited in claim 1, wherein said first primary layer region is located on a bodyside of the absorbent composite, and said second primary layer region is located relatively outward from first layer region.

7. An absorbent article as recited in claim 1, wherein at least one of said primary layer regions includes a superabsorbent material having a Modified Absorbency Under Load value of

at least about 20 g/g.

8. (Cancelled)

9. An absorbent article which includes an absorbent core having a first primary layer region and at least a second primary layer region; wherein

at least one of said first and second primary layer regions includes a plurality of sublayers;

said absorbent core has a longitudinal length, a lateral width and an appointed front-most edge;

said first primary layer region has a basis weight of not less than about 100 g/m^2 and not more than about 500 g/m^2 ,

said first primary layer region has a first layer region density of not less than about 0.03 g/cm^3 and not more than about 0.4 g/cm^3 ;

said first primary layer region includes fibrous material in an amount which is not less than about 25 wt% and is not more than about 80 wt%;

said fibrous material includes fibers having fiber sizes which are not less than about 4 μm and not more than about 20 μm;

said fibrous material includes fibers which exhibit a water contact angle of not more than about 65 degrees;

said first primary layer region includes a superabsorbent material in an amount which is not less than about 20 wt% and is not more than about 75 wt%;

said superabsorbent material includes superabsorbent particles having dry particle sizes which are not less than about 140 μm and are not more than about 1000 μm;

said superabsorbent material has an MAUL value of not less than about 20 g/g; and

said superabsorbent material has a Tau value of not less than about 0.8 min.

10. An article as recited in claim 9, wherein said first primary layer region is substantially coterminous with side edges of said second primary layer region; and

said first primary layer region contained within a zone which begins at a laterally extending line positioned about 7% of the core length inboard from said front-most edge of the absorbent core and extends to a laterally extending line positioned about 62% of the core length inboard from said front-most edge of the absorbent core.

11. An article as recited in claim 10, wherein said first primary layer region includes a binder material.

12. An article as recited in claim 9, wherein said second primary layer region includes a plurality of sublayers having uncreped-through-air-dried material.

13. An article as recited in claim 9, wherein said second primary layer region has a longitudinal extent which is greater than a longitudinal extent of said first primary layer region; and said second primary layer region has a lateral extent which is substantially coterminous with said first primary layer region;

14. An article as recited in claim 9, wherein said second primary layer region has a longitudinal extent which is greater than a longitudinal extent of said first primary layer region;

said second primary layer region has a lateral extent which is less than a lateral extent of said first primary layer region; and

a lateral extent of at least a portion of said second primary layer region is not less than about 30% of a lateral extent of a correspondingly adjacent portion of said first primary layer region.

15. An article as recited in claim 9, wherein said second primary layer region has a longitudinal extent which is greater than a longitudinal extent of said first primary layer region;

said second primary layer region has a lateral extent which is greater than a lateral extent of said first primary layer region;

a lateral extent of at least a portion of said first primary layer region is not less than about 30% of a lateral extent of a correspondingly adjacent portion of said second primary layer region.

16. An article as recited in claim 15, wherein said second primary layer region has a substantially uniform basis weight.

17. An article as recited in claim 9, wherein said second primary layer region has a basis weight which is not less than about 300 g/m^2 and is not more than about 700 g/m^2;

said second primary layer region has a second layer region density of not less than about 0.1 g/cm^3 and not more than about 0.3 g/cm^3;

said second primary layer region includes fibrous material in an amount which is not less than about 50 wt% and is not more than about 80 wt%;

said fibrous material includes fibers having fiber diameters which are not less than about 4 μm and not more than about 20 μm;

said fibrous material includes fibers which exhibit a water contact angle of not more than about 65 degrees;

said second primary layer region includes a superabsorbent material in an amount which is not less than about 20 wt% and is not more than about 50 wt%; and

said superabsorbent material includes superabsorbent particles having particle sizes which are not less than about 140 μm, and are not more than about 1000μm.

18. An article as recited in claim 17, wherein said superabsorbent material in said second primary layer region has a MAUL value of not less than about 20 g/g, and has a Tau value of at least about 0.4 minutes.

19. An article as recited in claim 18, wherein said superabsorbent material in said second primary layer region is configured as a superabsorbent layer laminated between layers of uncreped-through-air-dried material.

20. An article as recited in claim 19, wherein said article further comprises a backsheet layer and a substantially liquid permeable topsheet layer which are configured with said absorbent core sandwiched therebetween.

21. An article as recited in claim 20, wherein said absorbent core has a Flow Conductance Value of at least about $4 * 10^{-6}$ cm^3; and

at least one of said first and second primary layer regions has a Liquid Wicking Value of at least about 24%.

22. An article as recited in claim 20, wherein at least one of said first and second primary layer regions has a Liquid Wicking Value of at least about 38%.

23. An absorbent article, comprising:

a backsheet layer;

a substantially liquid permeable topsheet layer;

an absorbent composite structure sandwiched between said backsheet and topsheet layers, said absorbent composite including an absorbent core having a first primary layer region and at least a second primary layer region;

at least one of said first and second primary layer regions having a Liquid Wicking Value of at least about 38%; and

at least one of said first and second primary layer regions includes a plurality of sublayers; wherein

said first primary layer region includes a first superabsorbent having a first Tau value; said second primary layer region includes a second superabsorbent having a second Tau value; and said first Tau value is greater than said second Tau value.

24. An article as recited in claim 23, wherein said first primary layer region is positioned at a bodyside of said absorbent core; and a ratio of said first Tau value to said second Tau value is at least about 2:1.

25. An article as recited in claim 24, wherein said ratio of said first Tau value to said second Tau value is at least about 5:1.

26. An article as recited in claim 9, wherein said first primary layer region is positioned at a bodyside of said absorbent core; said first primary layer region includes a first superabsorbent having a first Tau value; said second primary layer region includes a second superabsorbent having a second Tau value; and a ratio of said first Tau value to said second Tau value is at least about 2:1.

27. An article as recited in claim 26, wherein said ratio of said first Tau value to said second Tau value is at least about 5:1.

28. An article as recited in claim 17, wherein said absorbent core has a dry thickness of not more than about 6 mm, and a minimum crotch width of not more than about 10 cm.

29. An article as recited in claim 17, wherein said article is configured for use by an adult, and wherein said absorbent core has a dry thickness of not more than about 6 mm, and a minimum crotch width of not more than about 14 cm.

30. An article as recited in claim 17, wherein said absorbent core has a Flow Conductance Value of at least about $7 * 10^{-6}$ cm^3; and at least one of said first and second primary layer regions has a Liquid Wicking Value of at least about 38%.

31. An article as recited in claim 17, wherein at least one of said first and second primary layer regions has a Liquid Wicking Value of at least about 38%.

32. An article as recited in claim 17, wherein said absorbent core has a Combined Conductance-Wicking Value of at least about $14 * 10^{-6}$ cm^3.

33. An article as recited in claim 31, wherein said absorbent core has a Combined Conductance-Wicking Value of at least about $14 * 10^{-6}$ cm^3.

34. An article as recited in claim 32, wherein said absorbent core has a Conductance-Wicking Value of at least about $14 * 10^{-6}$ cm^3.

35. An absorbent article, comprising:

a backsheet layer;

a substantially liquid permeable topsheet layer;

an absorbent composite structure sandwiched between said backsheet and topsheet layers, said absorbent composite including an absorbent core having a first primary layer region and at least a second primary layer region;

at least one of said first and second primary layer regions having a Liquid Wicking Value of at least about 38%; and

at least one of said first and second primary layer regions includes a plurality of sublayers; wherein

said article is configured for use by an adult, and said absorbent core has a dry thickness of not more than about 6 mm, and a minimum crotch width of not more than about 14 cm; and

at least one of said primary layer regions includes a superabsorbent material which exhibits a Tau value of not less than about 0.8 min.

36. An article as recited in claim 35, wherein said first primary layer region is located on a bodyside of the absorbent composite, and said second primary layer region is located relatively outward from first layer region.

37. An absorbent article as recited in claim 35, wherein at least one of said primary layer regions includes a superabsorbent material having a Modified Absorbency Under Load value of at least about 20 g/g.

38. (Cancelled)

39. An absorbent article as recited in claim 35, wherein

said absorbent core has a longitudinal length, a lateral width and an appointed front-most edge;

said first primary layer region has a basis weight of not less than about 100 g/m^2 and not more than about 500 g/m^2 ,

said first primary layer region has a first layer region density of not less than about 0.03 g/cm^3 and not more than about 0.4 g/cm^3 ;

said first primary layer region includes fibrous material in an amount which is not less than about 25 wt% and is not more than about 80 wt%;

said fibrous material includes fibers having fiber sizes which are not less than about 4 μm and not more than about 20 μm;

said fibrous material includes fibers which exhibit a water contact angle of not more than about 65 degrees;

said first primary layer region includes a superabsorbent material in an amount which is not less than about 20 wt% and is not more than about 75 wt%;

said superabsorbent material includes superabsorbent particles having dry particle sizes which are not less than about 140 μm and are not more than about 1000 μm;

said superabsorbent material has an MAUL value of not less than about 20 g/g; and

said superabsorbent material has a Tau value of not less than about 0.8 min.

40. An article as recited in claim 1, wherein said absorbent core has a dry thickness of not more than about 6 mm, and a minimum crotch width of not more than about 10 cm.

41. An absorbent article, comprising:

a backsheet layer;

a substantially liquid permeable topsheet layer;

an absorbent composite structure sandwiched between said backsheet and topsheet layers, said absorbent composite including an absorbent core having a first, superabsorbent containing, fibrous primary layer region and at least a second, superabsorbent containing, fibrous primary layer region;

at least one of said first and second primary layer regions having a Liquid Wicking Value of at least about 38%; and

at least one of said first and second primary layer regions includes a plurality of sublayers; wherein

at least one of said primary layer regions includes a superabsorbent material having a Modified Absorbency Under Load value of at least about 20 g/g.

42. An absorbent article, comprising:

a backsheet layer;

a substantially liquid permeable topsheet layer;

an absorbent composite structure sandwiched between said backsheet and topsheet layers, said absorbent composite including an absorbent core having a first, superabsorbent containing, fibrous primary layer region and at least a second, superabsorbent containing, fibrous primary layer region;

at least one of said first and second primary layer regions having a Liquid Wicking Value of at least about 38%; and

at least one of said first and second primary layer regions includes a plurality of sublayers; wherein

said absorbent core has a dry thickness of not more than about 6 mm, and a minimum crotch width of not more than about 10 cm.

* * * * ***End of Appendix*** * * * * *